

RECEIVED
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION
JUN 26 P 5:19

SHYANDREA AND MARY
HESTER, et al.,

Plaintiffs,

v.

LOWNDES COUNTY
COMMISSION, et al.

Defendants.

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CIVIL ACTION NO. 2:06cv572.

MOTION TO DISMISS LOWNDES COUNTY, ALABAMA, COMMISSION

COMES NOW Defendant, Lowndes County Commission, a Defendant in the above-styled cause, and moves this Honorable Court to dismiss the Plaintiffs' Complaint against it pursuant to Rule 12(b)(6), as the Plaintiffs' Complaint and component parts, separately and severally fails to state a claim against the County upon which relief may be granted. As reasons for so moving, Defendant submits its Memorandum Brief in support of its Motion filed contemporaneously herewith and the following:

1. The Plaintiffs have failed to allege facts establishing liability on the part of the Lowndes County, Alabama, Commission.

a. The Lowndes County, Alabama, Commission cannot be held vicariously liable for actions, or inaction of the Lowndes County, Alabama, Sheriffs Deputies or the Employees of Emergystat, Inc.

i. Liability under 42 U.S.C. § 1983 cannot be based on a theory of *respondeat superior*.

ii. Deputy Sheriffs are employees of the state, not the county commissions.

iii. Christopher Brown is not an employee of the Lowndes County, Alabama, Commission, therefore, the County Commission cannot be held responsible for his actions.

b. The Lowndes County, Alabama, Commission, has neither the duty, nor the authority, to train or supervise employees of the Lowndes County, Alabama, Sheriff's Office.

c. The Sheriff of Lowndes County, Alabama, and his deputy sheriffs are not policymakers of the Lowndes County, Alabama, Commission, for the purposes of holding the County liable pursuant to a custom or policy.

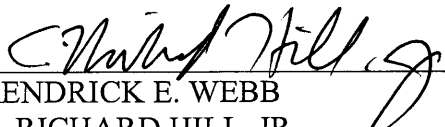
d. The Plaintiffs cannot show that a custom or policy of the Lowndes County, Alabama, Commission was the moving force behind the constitutional violation alleged.

2. Plaintiffs' claims against fictitious Defendants A-G are due to be dismissed.

3. Lowndes County, Alabama, is immune from punitive damages.

WHEREFORE, PREMISES CONSIDERED, Defendant, Lowndes County, Alabama, commission, requests that this Honorable Court enter an order dismissing all claims against them in this action.

Respectfully submitted this the 26th day of June, 2006.


KENDRICK E. WEBB (WEB022)
C. RICHARD HILL, JR. (HIL045)

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COUNTY, ALABAMA, COMMISSION, AND
JIMMY HARRIS

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing by placing a copy of the same in the United States Mail, postage prepaid, upon:

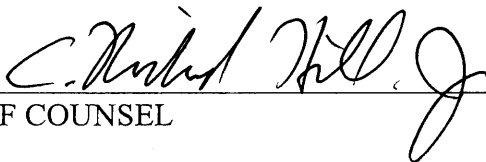
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Honorable Ruby Jones
Lowndes County Court Clerk
P. O. Box 876
Hayneville, AL 36040

this 26th day of June, 2006.



OF COUNSEL